

KHAW & PARTNERS
Advocates & Solicitors

POLICY & PROCEDURES
ON ANTI-BRIBERY
(APPLICABLE TO
BUSINESS ASSOCIATES, SUPPLIERS,
SERVICE PROVIDERS & AGENTS)
RELATING TO SECTION 17A OF THE
MALAYSIAN ANTI-CORRUPTION COMMISSION
ACT 2009

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1. SECTION 17A OF THE MACC ACT - CORPORATE LIABILITY PROVISION

1.1 General

- i) Before 1st June 2020, there are already provisions on offences relating to bribery and corruption under the Malaysian Anti-Corruption Commission Act 2009 (“**MACC Act**”). Such provisions focuses on the liability of **individuals** involved in corruption.
- ii) With effect from 1st June 2020, with the coming into force of Section 17A of the MACC Act (“**S-17A**”), a commercial organization can be liable for the corrupt activity of a person associated with such commercial organization.

1.2 Offence

A commercial organization commits an offence if a **person associated with the commercial organization corruptly** gives, agrees to give, promises or offers to any person any **gratification** whether for the benefit of that person or another person **with intent** to obtain or retain business, or to obtain or retain an advantage in the conduct of business, for the commercial organization.

a “**commercial organization**” means a company incorporated, a partnership formed, or a limited liability partnership registered under Malaysian law and carries on business in Malaysia or elsewhere; or a company wherever incorporated or a partnership wherever formed and carries on a business or part of a business in Malaysia.

a person is “**associated with the commercial organization**” if he is:

- (i) a director of the commercial organization;
- (ii) a partner of the commercial organization;
- (iii) an employee of the commercial organization; or
- (iv) **a person who performs services for or on behalf of the commercial organization.**

“**gratification**” means:

- (a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;
- (b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) any forbearance to demand any money or money’s worth or valuable thing;
- (f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- (g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).

KHAW & PARTNERS

1.3 Liability

A commercial organization who commits an offence under S-17A will, on conviction, be liable to:

- the following fine, whichever is the higher:
 - at least **10** times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature; or
 - **RM1 million**; or
- imprisonment of up to 20 years; or
- both.

2. WHAT THIS MEANS TO YOU AND US

2.1 In addition to personal liability by individuals who are involved in bribery or corruption, we, KHAW & PARTNERS, as a commercial organization, can potential be liable for an offence under S-17A IF, in providing goods or services to or for us or on our behalf, you do the following:

2.1.1 corruptly gives to anyone or any party any gratification; or

2.1.2 corruptly agrees to give to anyone or any party any gratification; or

2.1.3 corruptly promises or offers to anyone or any party any gratification, with intent:

(a) to obtain or retain our business; or

(b) to obtain or retain an advantage in the conduct of business for us.

2.2 Reference to “anyone” or “any party” can be any person, be it our employee or a third person who is of authority such as an official or employee of Government or regulatory authority.

2.3 As required under S-17A, we are now issuing our Policy & Procedure on Anti-Bribery (“**Anti-Bribery Policy**”) to put in place our policy and procedures against bribery and corrupt activity within the ambit of in S-17A. This Anti-Bribery Policy is applicable our business associates, suppliers, service providers and agents.

3. OUR BASIC BUSINESS PRINCIPLE & POLICY

3.1 Our business decisions will be made based on integrity, good ethics and compliance with statutory and regulatory requirements.

3.2 We do not condone corrupt practices.

3.3 Any improper or dishonest way of doing business, including any form of bribery or corruption (whether direct or indirect), such as:

KHAW & PARTNERS

3.3.1 the giving, agreeing or promising to give or offer anything of value to any person with the purpose of influencing an action or decision, or making of any facilitation payments (payments with the aim to get or expedite what you have a right to anyway); or

3.3.2 the asking, receiving or accepting anything of value from any person with the aim of receiving favourable treatment,

is strictly forbidden and will not be tolerated. Using a third party or other method to bypass this prohibition is forbidden.

3.4 There is no excuse for not doing honest business with integrity. Not knowing or pretending not to know is not an excuse.

4. GIFTS, TRAVEL & ENTERTAINMENT

4.1 Gifts, entertainment and other gratification will not influence the integrity of our business decisions. Examples of gifts and entertainment include travelling, vacations, dinners, expense payments and favours such as use of assets or services provided for free or at a preferential rate (which such party would not have otherwise provide in the normal circumstances in an arms-length transaction).

4.2 Save as specifically provided in paragraph 4.4 below:

4.2.1 Neither we nor our employee should accept any gift from you. We practice a “No Gift Policy”.

4.2.2 Our employees are forbidden from receiving gratuities (in cash or in kind) or favours of any nature from any person who has dealing (whether current or prospective) with us, including our business associates, suppliers, service providers, vendors or agents.

4.3 We do appreciate that certain nature of gifts, travel or entertainment may be necessary or desired in specific situation, in line with applicable laws, the generally accepted business practices, or the culture or religious practises of the country of the giver or the recipient.

4.4 Being an exception to our “No Gift Policy”, only the following gifts, travel or entertainment that develop or strengthen business relations that show appreciation or create goodwill and that does not obligate us or any of our employees into returning favours may be accepted:

4.4.1 Gifts that have the following nature or character:

(i) is NOT in cash or cash equivalents, such as:

(a) food or beverages items, provided that the total value does not exceed RM200.00. The gifts must not be intentionally broken into a series of gifts to circumvent the restriction herein;

(b) gifts of diary or calendar which has limited monetary value; or

(c) wreath given upon the death of a staff's family member;

KHAW & PARTNERS

- (ii) is a reasonable appreciation or complement to the business relationship;
 - (iii) is infrequent, moderate and given at the appropriate time and proportionate to the recipient's position;
 - (iv) is in line with the law and generally accepted business practices of the country of the recipient, and the applicable laws or national culture or religious practises of the giving party; AND
 - (v) is done unconditionally and in a transparent way.
- 4.4.2 Travelling offered in a motor vehicle to a meeting or for a work related matter in relation to services provided by or to us.
- 4.4.3 Entertainment provided to or including us in which one or more of our Partners are in attendance, or with the specific permission of our Partner, subject to paragraphs 4.4.1(ii) to (v) above.

5. PUBLIC OFFICIALS

- 5.1 In providing goods or services to us or to our client(s), you must not give, agree to give, promise or offer any gift, travel or entertainment to a public official, an official of a political party, or people close to member(s) of our Firm or our client(s), such as their family members and close advisors, aides or assistants, unless with the prior specific written approval in writing of our Head of Firm. Any such approval will be considered on a case-by-case basis by reference to the specific facts and be given in compliance with applicable laws.

"public official" means an officer, member, employee or servant of a public body and includes a member of the administration, a member of Parliament, a member of State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court or any person receiving any remuneration from public funds, or if the public body is a corporate sole, includes the person who is incorporated as such.

"a public body" includes:

- (a) the Government of Malaysia;
- (b) the Government of a State;
- (c) any local authority and any other statutory authority;
- (d) any department, service or undertaking of the Government of Malaysia, the Government of a State, or a local authority;
- (e) any society registered under subsection 7(1) of the Societies Act 1966;
- (f) any branch of a registered society established under section 12 of the Societies Act 1966;
- (g) any sports body registered under section 17 of the Sports Development Act 1977;
- (h) any co-operative society registered under section 7 of the Co-operative Societies Act 1993;
- (i) any trade union registered under section 12 of the Trade Unions Act 1959;
- (j) any youth society registered under section 9 of the Youth Societies and Youth Development Act 2007;
- (k) any company or subsidiary company over which or in which any public body as is referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) has controlling power

KHAW & PARTNERS

- or interest; or
- (l) any society, union, organization or body as the Minister may prescribed from time to time by order published in the Gazette.

6. DONATIONS & SPONSORSHIPS

- 6.1 Do not make any donation or sponsorship, for any purpose:
- 6.1.1 in our name or on our account; or
 - 6.1.2 which gives the impression that we or any of our Partners are involved or are providing support in any capacity.

7. THIRD PARTY PAYMENTS

- 7.1 We will pay a business associate, supplier, service provider or agent:
- 7.1.1 for goods or services that are, or will be, actually received or delivered;
 - 7.1.2 for amounts that relates only to the goods or services received or delivered;
 - 7.1.3 based on and documented by a proper invoice; and
 - 7.1.4 in any mode of payment permitted by law other than by way of cash payment (unless the amount is less than RM500.00, or as approved by our Head of Firm), and if payment is to be made by way of electronic or bank transfer to you, to a bank account in your name.
- 7.2 Any improper ways of doing business involving a third party is not allowed. Some examples and signs of improper ways of doing business are:
- 7.2.1 the third party suggests that conduct which is otherwise illegal is acceptable because it is the usual practise or custom;
 - 7.2.2 the third party requests payments to “finalise or facilitate the deal” or something to this effect;
 - 7.2.3 the third party requests cash or cash equivalent payment when it is unusual do to so taking into account the facts and surrounding circumstances of the transaction; or
 - 7.2.4 a public official requests a specific third party to be selected;
 - 7.2.5 the third party agent insists on dealing with public officials without our or our client’s presence; or
 - 7.2.6 the third party suggest to rely on certain “dodgy” contacts or relationships for getting the work done.

8. CONFLICT OF INTEREST

KHAW & PARTNERS

- 8.1 We expect you to avoid the possibility of any conflict of interest when dealing with us and be transparent with us and notify us immediately in writing should there be a possibility of a potential conflict of interest situation.
- 8.2 An example of a situation of potential conflict of interest situation is where you or any of your directors, partners or employees is a family member or relative of our employee or our Partner who is directly or indirectly involve in the business transaction with you.
- 8.3 We need to avoid the possibility of a conflict of interest to avoid suspicious that any of our employee or Partner is not acting in our best interest when accepting or receiving the provision of goods or services from you.

9. NON-COMPLIANCE

In view of the seriousness of the anti-bribery provisions under the MACC Act, including S-17A, any non-compliance of our Anti-Bribery Policy herein by you is a serious breach of our ethics, policy and procedures which may result in the termination of our business relationship and possibly other consequences under applicable laws.

10. QUESTIONS, CONCERNS & WHISTLE BLOWING

- 10.1 Please let us know if you have any question or concern about our Anti-Bribery Policy.
- 10.2 You are encouraged to report in good faith, any actual, attempted or suspected violation of S-17A anonymously.
- 10.3 If you wish to do so, you may write directly to any one or more of our 3 Senior Partners to their respective e-mail address, and copied to the Head of Firm. Their respective e-mail address are available from our web-site. E-mails channelled to any of the 3 Senior Partners (including the Head of Firm) can be assessed only by the addressee, hence confidentiality is retained.

11. CONFIRMATION AND UNDERTAKING

- 11.1 Our Anti-Bribery Policy herein may be amended, supplemented, replaced or otherwise modified from time to time to reflect changes in circumstances, our practices, policies and procedures and applicable laws, guidelines or requirements of the relevant authorities. The latest version of our Anti-Bribery Policy may be available at our website at www.khawpartners.com.my.